

## **CHAPTER 16**

### **Land Use Code**

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**ARTICLE VIII****Floodplain Areas****Sec. 16-8-10. Statutory authorization.**

The State Legislature has, in Section 31-23-301, C.R.S., delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. (Ord. 480 §8.1, 2003)

**Sec. 16-8-20. Findings of fact.**

(a) The flood hazard areas of the Town are subject to periodic inundation that results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards that increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss. (Ord. 480 §8.2, 2003)

**Sec. 16-8-30. Statement of purpose.**

It is the purpose of this Article to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions to specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (8) To ensure that those who occupy the areas of special flood hazards assume responsibility for their actions. (Ord. 480 §8.3, 2003)

**Sec. 16-8-40. Methods of reducing flood losses.**

In order to accomplish its purposes, this Article includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging and other development which may increase flood damage; and
- (5) Preventing or regulating the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards in other areas. (Ord. 480 §8.4, 2003)

**Sec. 16-8-50. Definitions.**

Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application:

*Appeal* means a request for a review of the Town Clerk's interpretation of any provision of this Article or a request for a variance.

*Area of special flood hazard* means the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year.

*Base flood* means the flood having a one-percent chance of being equaled or exceeded in any given year.

*Critical feature* means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

*Development* means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

*Existing manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by the Town.

*Expansion to existing manufactured home park or subdivision* means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

*Flood* or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters; and/or
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

*Flood Insurance Rate Map (FIRM)* means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

*Flood Insurance Study (FIS)* means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

*Floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

*Levee* means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

*Levee system* means a flood protection system that consists of a levee or levees and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

*Lowest floor* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Article.

*Manufactured home* means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *manufactured home* does not include a recreational vehicle. This term also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. This definition is for the purpose of this Article only.

*Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

*Mean sea level* means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

*New construction* means structures for which the *start of construction* commenced on or after the effective date of Ordinance No. 137.

*Recreational vehicle* means a vehicle which is: (a) built on a single chassis; (b) four hundred (400) square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

*Remedy a violation* means to bring the structure or other development into compliance with state or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the Article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

*Start of construction* includes substantial improvement, and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty (180) days of the permit date. The *actual start* means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. *Permanent construction* does not include land preparation such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

*Structure* means a walled and roofed building or manufactured home that is principally above ground.

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

*Substantial improvement* means any repair, reconstruction, addition or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:

- a. Before the improvement or repair is started; or
- b. If the structure has been substantially damaged and is being restored, before the damage occurred. For the purpose of this definition, *substantial improvement* is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- a. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
- b. Any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

*Variance* means a grant of relief from the requirements of this Article that permits construction in a manner that would otherwise be prohibited by this Article.

*Violation* means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in NFIP Standards § 603(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4) or (e)(5) is presumed to be in violation until such time as that documentation is provided.

*Water surface elevation* means the height, in relation to the NGVD of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas. (Ord. 480 §8.5, 2003)

**Sec. 16-8-60. Lands to which this applies.**

This Article shall apply to all areas of special flood hazards within the jurisdiction of the Town. (Ord. 480 §8.6, 2003)

**Sec. 16-8-70. Basis for establishing the areas of special flood hazard.**

The areas of special flood hazard identified by the Federal Emergency Management Agency is a specific engineering report entitled *The Flood Insurance Study for the Town of Milliken, Colorado*, dated February 1979, and with accompanying Flood Insurance Rate Maps (FIRM), Flood Boundary Maps and Floodway Maps, and is hereby adopted by reference and declared to be a part of this Article. The Flood Insurance Study and FIRM are on file at the Town Hall, 1109 Broad Street, Milliken, Colorado. (Ord. 480 §8.71, 2003)

**Sec. 16-8-80. Compliance.**

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this Article and other applicable regulations. (Ord. 480 §8.8, 2003)

**Sec. 16-8-90. Abrogation and greater restrictions.**

This Article is not intended to repeal, abrogate or impair any existing easement, covenants or deed restrictions. However, where this Article and other ordinance, easement, covenant or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 480 §8.8, 2003)

**Sec. 16-8-100. Interpretation.**

In the interpretation and application of this Article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 480 §8.10, 2003)

**Sec. 16-8-110. Warning and disclaimer of liability.**

The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This Article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the Town, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this Article or any administrative decision lawfully made hereunder. (Ord. 480 §8.11, 2003)

**Sec. 16-8-120. Establishment of development permit.**

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 16-8-70 of this Article. Application for a development permit shall be made on forms furnished by the Town Clerk, and may include but shall not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials and drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- (1) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
- (2) Elevation in relation to mean sea level to which any structure has been floodproofed;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Subsection 16-8-170(a)(2) of this Article and
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. (Ord. 480 §8.12, 2003)

**Sec. 16-8-130. Designation of Town Clerk.**

The Town Clerk is hereby appointed to administer and implement this Article by granting or denying development permit applications in accordance with its provisions. (Ord. 480 §8.13, 2003)



**Sec. 16-8-140. Duties and responsibilities of Town Clerk.**

Duties of the Town Clerk shall include but not be limited to:

(1) Permit Review.

a. Review all development permits to determine that the permit requirements of this Article have been satisfied;

b. Review all development permits to determine that all necessary permits have been obtained from federal, state or local governmental agencies from which prior approval is required;

c. Review all development permits to determine if the proposed development adversely affects the flood-carrying capacity of the area of special flood hazard. For purposes of this Article, *adversely affects* means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point; and

d. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of this Article are met.

(2) Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 16-8-70 of this Article, the Town Clerk shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, as criteria for requiring new construction, substantial improvements or other development in Zone A as delineated on a Flood Insurance Rate Map, in order to administer Subsections 16-8-170(a)(1) and (2).

(3) Information to be Obtained and Maintained.

a. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

b. For all new or substantially improved floodproofed structures:

1. Verify and record the actual elevation (in relation to mean sea level to which the structure has been floodproofed);

2. Maintain the floodproofing certifications required in Subsection 16-8-120(3) of this Article; and

3. Maintain for public inspection all records pertaining to the provisions of this Article.

c. Alteration of Watercourse:

1. Notify adjacent communities and the Colorado Water Conservation Board prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

d. Interpretation of FIRM Boundaries. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in 16-8-150 below. (Ord. 480 §8.14, 2003)

**Sec. 16-8-150. Variance procedure.**

(a) Appeal Board.

(1) The Board of Trustees shall hear and decide appeals and requests for variances from the requirements of this Article.

(2) The Board of Trustees shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Town Clerk in the enforcement or administration of this Article.

(3) Those aggrieved by the decision of the Board of Trustees may appeal such decisions to the Weld County District Court, as approved in Section 31-23-307, C.R.S.

(4) In passing upon such application, the Board of Trustees shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Article and:

- a. The danger that materials may be swept into other lands to the injury of others;
- b. The danger to life and property due to flooding or erosion damage;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. The importance of the services provided by the proposed facility to the community;
- e. The necessity to the facility of a waterfront location, where applicable;
- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

g. The compatibility of the proposed use with the existing and anticipated development;

h. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area;

i. The safety of access to the property at times of flood for ordinary and emergency vehicles;

j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

(5) Upon consideration of the factors of Paragraph (4) above and the purposes of this Article, the Board of Trustees may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Article.

(6) The Town Clerk shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency.

(b) Conditions for Variances.

(1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half ( $\frac{1}{2}$ ) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base level, provided that Items a. through k. in Subsection (a)(4) above have been fully considered. As the lot size increases beyond one-half ( $\frac{1}{2}$ ) acre, the technical justifications required for issuing the variance increase.

(2) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Section.

(3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances or cause fraud on or victimization of the public as identified in Subsection (a)(4) above, or conflict with existing local laws or ordinances.

(6) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (Ord. 480 §8.15, 2003)

**Sec. 16-8-160. General standards for flood hazard reduction.**

In all areas of special flood hazards, the following standards are required.

(1) Anchoring.

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.

b. All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces. Specific requirements may be:

1. Over-the-top ties shall be provided at each of the four (4) corners of the manufactured home, with two (2) additional ties per side at intermediate locations, with manufactured homes less than fifty (50) feet long requiring one (1) additional tie per side;

2. Frame ties shall be provided at each corner of the home with five (5) additional ties per side at intermediate points, with manufactured homes less than fifty (50) feet long requiring four (4) additional ties per side;

3. All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred (4,800) pounds; and

4. Any additions to the manufactured home shall be similarly anchored.

(2) Construction Materials and Methods.

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. For all new construction and substantial improvements, fully enclosed areas below the lowest floor automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or exceed the following minimum criteria: A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

d. In addition, all new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) Utilities.

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.

c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

d. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) Subdivision Proposals.

a. All subdivision proposals shall be consistent with the need to minimize flood damage.

b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

d. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less). (Ord. 480 §8.16, 2003)

**Sec. 16-8-170. Specific standards.**

(a) In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 16-8-70 or Subsection 16-8-140(2) of this Article, the following provisions are required:

(1) Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.

(2) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement; or, together with attendant utility and sanitary facilities:

a. Be floodproofed so that, below the base flood level, the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

c. Provide that, where a nonresidential structure is intended to be made watertight below the base flood level:

1. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the application provisions of Subparagraph 16-8-140(3)c.2 above; and

2. A record of such certificates which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community under Subparagraph 16-8-140(3)c.2 above.

(b) Manufactured Homes.

(1) Manufactured homes shall be anchored in accordance with Subsection 16-8-160(2).

(2) All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and is securely anchored to an adequately anchored foundation system.

(3) This Section applies to manufactured homes to be placed on a single lot or in a new or expansion to an existing manufactured home park or subdivision. All manufactured homes that are placed or substantially improved within Zones A and AE on sites: (a) outside of the manufactured home park or subdivision, (b) in a new manufactured home park or subdivision, (c) in an expansion to an existing manufactured home park or subdivision, or (d) in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist floatation, collapse and lateral movement.

(4) This Section applies to manufactured homes to be placed in an existing manufactured home park or subdivision prior to the time these regulations are implemented. All manufactured homes to be placed or substantially improved on sites in existing manufactured home parks or subdivisions within Zones A and AE that are not subject to the provisions of Paragraph (3) above shall be elevated so that either: (a) the lowest floor of the manufactured home is at or above the base flood elevation, or (b) the manufactured home chassis is supported by reinforced piers or other foundation elements that are not less than thirty-six (36) inches in height above grade and is securely anchored to an adequately anchored foundation system to resist floatation, collapse and lateral movement. (Ord. 480 §8.17, 2003)

**Sec. 16-8-180. Floodways.**

Located within areas of special flood hazard established in this article are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions apply:

(1) Prohibit encroachments, including fill, new construction, substantial improvements and other development, unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) If Subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Article. (Ord. 480 §8.17, 2003)